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Attorney for Defendant
LAWRENCE J. GERRANS

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that before the Honorable Edward Chen, United States District Judge, Defendant LAWRENCE GERRANS, by and through counsel, will move the Court to set the terms of release pending sentencing.

This motion is based on this Notice, Declaration of Counsel of Brian H Getz, Memorandum of Points and Authorities, all applicable judicial and statutory authority, and any oral or documentary evidence to be presented at the hearing of this motion.

DATED: March 17, 2020

Respectfully submitted,

/s/ Brian H Getz

BRIAN H GETZ

Attorney for Defendant

LAWRENCE J. GERRANS

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Attorney for Defendant
LAWRENCE J. GERRANS

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

UNITED STATES OF AMERICA,
vs.
LAWRENCE J. GERRANS
Plaintiff,
Defendant.
Case No.: 3:18-CR-00310-EMC
**DECLARATION OF COUNSEL BRIAN H
GETZ IN SUPPORT OF MOTION TO SET
TERMS OF RELEASE PENDING
SENTENCING**
Hearing Date: On the Pleadings
Hearing Time: On the Pleadings
Courtroom: 5, 17th Floor
Judge: Hon. Edward Chen

I, BRIAN H GETZ, say and depose:

1. I am an attorney at law duly licensed to practice law in the State of California and before this Court, and I am the attorney for defendant Lawrence Gerrans.

2. I make this Declaration in support of defendant's Motion to Set Terms of Release Pending Sentencing

3. I have personal knowledge of the facts stated herein and if called as a witness, I could testify competently to the matters set forth herein.

4. On or about March 16, 2020, the Mayor of San Francisco ordered all residents to “shelter in place” at home effective midnight, March 16, 2020, in order to help prevent the spread of

1 | COVID-19.

2 5. The defendant, Larry Gerrans, is as of the date of this motion in custody in the San
3 Francisco County Jail, pursuant to an agreement with the U.S. Marshall's Service.

4 6. On or about March 16, 2020, I was informed and therefore believe that the Sheriff of
5 the City and County of San Francisco has placed the jail population, including Mr. Gerrans, on
6 “lockdown” in order to prevent the spread of COVID-19. This means no visitation.

7 7. On or about March 16, 2020, I was informed and therefore believe that the Sheriff of
8 the City and County of San Francisco has not opposed the release from custody from the San
9 Francisco County Jail of nonviolent offenders, under appropriate conditions, in order to help
10 prevent the spread of COVID-19. The San Francisco Public Defender is filing motion for the
11 immediate release of non-violent inmates.

I declare under penalty of perjury that the foregoing is true and correct, except as to those matters stated upon information and belief, and as to those matters, I believe them to be true.

14 Executed on this date, the 17th of March, 2020, in San Francisco, California.

15 | DATED: March 17, 2020

Respectfully submitted,

/s/ Brian H Getz
BRIAN H GETZ
Attorney for Defendant
LAWRENCE J. GERRANS

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**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

UNITED STATES OF AMERICA,
vs.
LAWRENCE J. GERRANS
Plaintiff,
Defendant.
Case No.: 3:18-CR-00310-EMC
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
TO SET TERMS OF RELEASE PENDING
SENTENCING
Hearing Date: On the Pleadings
Hearing Time: On the Pleadings
Courtroom: 5, 17th Floor
Judge: Hon. Edward M. Chen

INTRODUCTION

As of the date of this motion, the President has declared a national public health emergency,¹ and the Governor of the State of California has declared a public health emergency throughout the state,² both in response to the spread of the Coronavirus Disease 2019 (COVID-19). The Centers of Disease Control and Prevention (CDC) and other health authorities have advised people to take precautions to reduce the exposure to COVID-19 and to slow the spread of the disease. An

¹ See Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak, <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/> (Mar. 13, 2020).

² See Governor Newsom Declares State of Emergency to Help State Prepare for Broader Spread of COVID-19, <https://www.ca.gov/2020/03/04/governor-newsom-declares-state-of-emergency-to-help-state-prepare-for-broader-spread-of-covid-19/> (Mar. 4, 2020).

1 important part of the CDC recommendations is social distancing: keeping an appropriate physical
 2 distance between people, and particularly in public settings.³ To ensure the health and safety of the
 3 defendant, Mr. Gerrans, through social distancing, undersigned counsel hereby moves the Court to
 4 find extraordinary circumstances present due to the COVID-19 pandemic and order his transfer
 5 from the San Francisco County Jail to placement on electronic home monitoring.

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FACTS

8 Mr. Gerrans was remanded into custody on August 21, 2019, following a hearing in District
 9 Court. On January 29, 2020, Mr. Gerrans was found guilty of all charged counts by jury trial. He
 10 has remained in the custody of the San Francisco County Sheriff (S.F. Sheriff), via a contract with
 11 the U.S. Marshall's Service, to date, in the San Francisco County Jail. *See Declaration of Counsel*
 12 *Brian H Getz in Support of Motion to Set Terms of Release Pending Sentencing* (Declaration of
 13 Counsel). On or about March 16, 2020, undersigned counsel learned that the S.F. Sheriff has placed
 14 the *entire* San Francisco County Jail on "lockdown" to help prevent the spread of COVID-19. *Id.*
 15 Further, undersigned counsel has been informed that the S.F. Sheriff has not opposed requests for
 16 the immediate release of nonviolent offenders at the S.F. Jail, under appropriate conditions, again in
 17 order to help prevent the spread of COVID-19. *Id.* These releases are being addressed on an ad hoc
 18 basis.

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ARGUMENT

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Grounds for Pre-Sentencing Release

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³ See generally Centers for Disease Control and Prevention, *Coronavirus (COVID-19)*, <https://www.cdc.gov/coronavirus/2019-ncov/index.html> (updated frequently); California Dep't of Public Health, <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx> (updated daily); see also Office of Governor, Executive Order N-25-20 (Mar. 12, 2020).

1 crimes defined in §§ 3142(f)(1)(A)-(C), however, § 3143(a)(2) states that such defendants shall be
 2 detained unless, under (A)(i), the court finds there is substantial likelihood that a motion for
 3 acquittal or new trial will be granted, or, under (ii), the government recommends no custody, and
 4 under (B), the court finds by clear and convincing evidence that; (1) the person is not likely to flee;
 5 or (2) the person poses no danger to the safety of any other person or the community. 18 U.S.C. §
 6 3143(a)(2). The burden is on the defendant to show that he or she is deserving of release. *See*
 7 *United States v. Manso-Portes*, 838 F.2d 889 (7th Cir. 1988); *United States v. Colon-Berrios*, 791
 8 F.2d 211 (1st Cir. 1986); *United States v. Strong*, 775 F.2d 504 (3d Cir. 1985).

9 The trial court is not required to predict whether the defense will prevail in its motion for
 10 new trial. Rather the defendant must only demonstrate a substantial question that is integral to the
 11 merits of the case. “Substantial” means a question that could go either way. *United States v. Haney*,
 12 800 F. Supp. 782 (E.D. Ark. 1992) (defendant passed both prongs (1) and (2) and was entitled to
 13 bail; defendant showed his motion for acquittal was a “close question” (i.e., could go either way)
 14 and he demonstrated he was unlikely to flee or pose a danger).

15 Despite the provisions of § 3143(a), which seemingly require the remand of most defendants
 16 after plea or trial, 18 U.S.C. § 3145(c) contains a provision that allows anyone who falls under the
 17 remand provisions of § 3143(a)(2) to be released if the defendant can show that there are
 18 exceptional circumstances which justify his or her release. *See United States v. Carr*, 947 F.2d 1239
 19 (5th Cir. 1991); *United States v. Kinslow*, 105 F.3d 555 (10th Cir. 1997). The term “exceptional
 20 circumstances” has been interpreted very broadly in the Ninth Circuit. *See, e.g., United States v.*
 21 *Garcia*, 340 F.3d 1013 (9th Cir. 2003) (discussing what circumstances might qualify as
 22 “exceptional”).

23 It goes virtually without saying that the present COVID-19 pandemic certainly qualifies as
 24 “exceptional circumstances.” As of the date of the writing of this motion, the Mayor of San
 25 Francisco has just ordered all residents to “lockdown” at home. And, as previously noted, the S.F.
 26 Sheriff has not opposed the request to release nonviolent offenders in the S.F. County Jail, under
 27 appropriate conditions, in order to prevent the spread of COVID-19. *See Declaration of Counsel.*

1 Mr. Gerrans is not a danger to the community. The unplanned, unexpected, unforeseen
2 meeting with Chris Gerrans, a blood relative, is not a reflection of who Lawrence Gerrans is. Since
3 that episode, Mr. Gerrans has had his trial. Mr. Gerrans no longer poses a threat to harm Chris
4 Gerrans.

CONCLUSION

Therefore, for the above reasons, the defense respectfully requests the Court, pursuant to the exceptional circumstances presented by the COVID-19 pandemic, order Mr. Gerrans's transfer from the San Francisco County Jail to placement on electronic home monitoring until the COVID-19 pandemic is deemed controlled by appropriate government authorities.

11 | DATED: March 17, 2020

Respectfully submitted,

/s/ Brian H Getz
BRIAN H GETZ
Attorney for Defendant
LAWRENCE J. GERRANS